Supreme Court, U.S.
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Nos. 07-35361, 07-353621, 07-35785, 07-35966

IN THE

Supreme Court of the United States

IVAN KRIGER, ANDREY SAMOLOVOV, JOSEPH ESPOSITO

Petitioners

v.

BOWEN PROPERTY MANAGEMENT, JOHN BALLAS

Respondents

On Petition For Writ Of Certiorari
To The Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is whether, causation under the Fair Housing Act (42 U.S.C. §3601 et seq.) is limited to a showing that the employer controlled the criminal investigation and prosecution in order to be liable for a failure to supervise an apartment manager, allowing that manager to charge for placement on the waiting list.

LIST OF PARTIES

In addition to the parties listed in the caption, Joseph Esposito, Natalya Prach, and Anatoliy Tsiribko were plaintiffs and Kerrey Lemons was a defendant in the original action.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Ivan Kriger and Andrey Samolovov respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in this case filed on November 17, 2008.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, from which this appeal is taken, is reported at 300 Fed.Appx. 526 (9th Cir. 2008), and appears as Appendix A ("App. A") hereto. The District Court opinions and Judgment appear as Appendix B ("App. B"), Appendix C ("App. C") and Appendix D ("App. D") hereto.

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on November 17, 2008. The Court of Appeals entered an order denying a petition for rehearing and petition for rehearing *en banc* on December 29, 2008, which appears as Appendix E ("App. E").

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This Petition is timely filed under 28 U.S.C. § 2101(c).

STATUTORY PROVISIONS INVOLVED

The Fair Housing Act of 1968 (FHA), 42 U.S.C. §3601, et seq.

The relevant provision of this statute is §3617:

> "It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in

> **the exercise or enjoyment of, any right granted or protected** by section 3603, 3605, or 3606 of this title." 42 U.S.C. § 3617 (emphasis added).

STATEMENT OF THE CASE

Defendant Bowen Property Management ("Bowen") is an Oregon corporation doing business in the State of Washington. Bowen managed the Westfall Village Apartments ("Westfall Village"), located in Spokane, Washington, from their initial rent-up mid-1997 through June 2002.[1] During the time period relevant to this action, Defendant John Ballas was the vice president and general manager of operations for Bowen. Defendant Kerrey Lemons was employed by Bowen as the rental manager at Westfall Village from April 1997 through June 2002.

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[1] The Spokane Housing Authority did not renew or extend its contract with Bowen to manage the Westfall Village Apartments when it expired in June 2002. The apartments at Westfall Village are dwellings within the meaning of 42 U.S.C. §3602(b).

Mr. Ballas was one of Ms. Lemons' supervisors during the time period relevant to this action. Mr. Ballas lived in Oregon and periodically visited Westfall Village, meeting with Ms. Lemons to review the operation of the apartments.

As the rental manager, Ms. Lemons' responsibilities included, but were not limited to, reviewing rental applications and submitting applications for tenancy to Bowen for final approval, as well as accepting and depositing payments for application fees, deposits and rent. She also maintained a "waiting list" for applicants. In or around September 1999, Natalya Prach, a tenant at Westfall Village, began working for Bowen at Westfall Village. Ms. Prach is of Russian national origin. She speaks Russian and also speaks English

to some degree. Kerrey Lemons was Ms. Prach's on-site supervisor.

On or about May 30, 2000, Ms. Prach called John Ballas and alleged that Ms. Lemons was soliciting and obtaining "additional fees" from Russian applicants and tenants in exchange for giving them apartments over other applicants. While the Russian tenants who paid the fees were usually placed higher on the waiting list, those Russian tenants that refused to pay the "additional fees" were denied placement on the waiting list. Mr. Ballas informed Ms. Lemons of Ms. Prach's allegations by telephone. Ms. Prach contacted Mr. Ballas again by telephone on May 31, 2000, and retracted her prior allegations about Ms. Lemons.

On May 31, 2000, there was a meeting at Westfall Village which the following persons

attended: Natalya Prach, Ivan Kriger, Andrey Samolovov, Anatoliy Tsiribko, Llydmila Greben, Irena Greben, Kerrey Lemons and Glen Lemons. Plaintiff Ivan Kriger is of Russian national origin and speaks Russian and English. Mr. Kriger has never been a resident at Westfall Village. The meeting was set up after Andrey Samolovov (Samolovov) received a telephone call at work on May 31, 2000. The caller was his girlfriend, Lyudmilla Greben, who lived at Westfall Village. She told Samolovov that she needed help, and asked him to meet her at the apartment of Irina Grebe, her sister-in-law, at Westfall Village. Samolovov went to Greben's Westfall Village apartment, and met Lyudmilla.

Shortly thereafter, plaintiff Natalya Prach, the Westfall assistant manager, and her friend plaintiff

Anatoliy Tsiribko, arrived at the Greben apartment. They explained to Samolovov that Kerry Lemons, the manager of Westfall Village, was demanding and receiving from Russian immigrant tenants and prospective tenants "additional fees" for apartments in the Westfall Village complex. On the consensus of the group, one of them called Lemons and set a meeting with her later that afternoon, at 5:00 p.m., in Greben's apartment. Samolovov also called his brother, plaintiff-petitioner Ivan Kriger (Kriger) an interpreter for a school district, to attend the meeting as an interpreter.

Samolovov, Lyudmilla Grebewn, Prach, Tsiribko and Kriger, as well as some of the tenants that had paid the special "fees" arrived for the meeting and were joined shortly thereafter by Kerry Lemons. They showed Lemons a list they had

prepared that was comprised of Russian immigrants who had paid her "additional fees." Lemons initially denied demanding "additional fees", but after Samolovov then suggested that the police be called, Lemons "started crying hard and said that we can decide this without the police".

At around 6:10, Irina Greben arrived home from work. Irina, a tenant who had paid an "additional fees", Lemons, and Kriger went into a bedroom of the apartment. When they came out of the apartment, Lemons said she was going to return the money. She then left, and returned later with her husband Glen Lemons. Glen Lemons acted very upset, and was shouting curses at the Russian tenants. Kerry Lemons then escorted her husband out of the apartment and returned alone. She took the prepared list, looked at it, and then told the

group to go and collect the signatures of the individuals whose names were on the list. Lemons then left. Prach and Lyudmilla Greben went to collect the requested signatures of the tenants.

On June 1, 2000, Ms. Prach again called Mr. Ballas and told him that the allegations she made against Ms. Lemons in her first call to him on May 30 were true. Mr. Ballas kept his superiors at Bowen informed of the events that occurred from May 20 through June 1, 2000, as they occurred during those three days, and discussed with them what action, if any, Bowen should take. Kerry Lemons contacted the police the next day, June 1, around 11:00 a.m., after having been instructed to do so by John Ballas. Soon after June 1, 2000, Mr. Ballas authorized a notice of termination of tenancy to be issued to Ms. Prach.

On June 2, 2000, Spokane Police Detective Richard Losh went to Westfall Village to investigate Kerry Lemons' complaint. Detective Losh was accompanied, at his request, by Immigration and Naturalization Service agent Nicholas Whitney, who was a co-worker of Ms. Lemons' sister. Agent Whitney and Detective Losh drove their separate vehicles to the Westfall location. Agent Whitney was unable to speak or translate Russian. The investigation continued for several days, often with Mr. Kriger acting as a translator.

Detective Losh was advised at some point during the first week of June, 2000, by Glen and Kerry Lemons, that the situation at Westfall Village had been resolved. Detective Losh then arranged a meeting with plaintiff Kriger, which took place at a Spokane McDonalds, either on June 4 or June 8,

2000. At that meeting he advised Kriger that he would suspend his investigation and Kriger could consider the situation resolved. Detective Losh asked Kriger to take a message to the Russian tenants Tsiribko, Prach, and Irina and Lyudmilla Greben stating that he, Detective Losh, would take care of everything, that he would make sure that Prach wouldn't be fired, that he would fix it all, to be quiet about it, and not do anything or talk to anyone. Kriger relayed the message.

In June, 2000, the Northwest Fair Housing Alliance (NWFHA) received complaints from Ms. Prach and others alleging that the Defendants had violated the Fair Housing Act by discriminating on the basis of national origin – specifically, that Ms. Lemons charged persons of Russian origin special "fees" to process their applications for new housing

and for transfers. NWFHA helped Ms. Prach and other Russian nationals file complaints of housing discrimination with the United States Department of Housing and Urban Development (HUD) on or around July 11 and 13, 2000.

Even though the agreement was followed, Detective Losh was contacted by telephone 2 weeks later, around June 22, by Kerry Lemons, who told him that Prach was at it again and was seen going from apartment to apartment talking to people about paying alleged "additional fees." Detective Losh then reinstated his investigation. That investigation resulted in the arrests of plaintiffs Kriger and Samolovov for first degree extortion, even though, according to Detective Losh's testimony, neither Kriger nor Samolovov did anything after the suspension of the investigation.

Ms. Prach, Ivan Kriger, Andrey Samolovov, and Anatoliy Tsiribko were arrested on or about September 6, 2000. These individual were jailed for one day after their arrest. Since they were facing deportation (removal), they subsequently pled guilty via *Alford* type pleas to misdemeanor disorderly conduct and were sentenced to one year probation.

Bowen retained Ms. Lemons as a resident manager at Westfall Village until June 2002 when its management responsibilities there ended. After leaving Westfall Village, Ms. Lemons was promoted and has remained employed by Bowen in other capacities continuously to this date.[2]

In July 2000, Natalya Prach filed a complaint of housing discrimination with the Department of Housing and Urban Development. On July 18, 2003 the United States brought this civil action against

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[2] As far as petitioner knows, Ms. Lemons still works for Bowen.

Bowen, Ballas and Lemons for discriminatory conduct in housing in violation of 42 U.S.C. §§3604 and 3617 in U.S. District Court for the Eastern District of Washington. The government alleged that Lemons, acting as a manager for Bowen, accepted fees, which were addition to the regular fees required of new tenants, from Russian applicants, but did not solicit such payments from non-Russian applicants. The government also alleged that Bowen's termination of Prach's employment and the service of a three-day notice to vacate were made in retaliation for her complaining that Ms. Lemons was demanding "additional fees" from Russian applicants.

In August 2003, Prach filed a complaint in intervention against Bowen, Ballas and Lemons. Prach alleged that Lemons intimidated her into withdrawing her allegations and that she was fired

in retaliation for complaining about Ms. Lemons' scheme.

In November 2003, Kriger, Samolovov and Tsiribko also intervened as plaintiffs alleging that they were aggrieved persons under 42 U.S.C. §§ 3602 and 3617. Though they were not tenants at Westfall Village, they alleged that Lemons falsely accused them of extortion in an effort to intimidate and retaliate against them for trying to help the Russian tenants exert their rights under the Fair Housing Act.

On September 22, 2005, the United States entered into a consent order with each of the defendants. The individual claims of Prach, Kriger, Samolovov and Tsiribko against Bowen, Ballas, and Lemons were tried before a jury in March, 2007. The district court instructed the jury that Ballas was at

all times an agent of Bowen, but that Bowen was liable for Lemons' conduct only if Lemons was acting within the scope of her authority as an agent of Bowen.

In special verdicts, the jury separately found that Lemons, as an agent of Bowen, and Bowen had retaliated against each of the plaintiffs on account of their having aided or encouraged any other person in the exercise or enjoyment of their housing rights under Section 3604.

Bowen and Ballas timely appealed the district court's final judgment. The Court of Appeals for the Ninth Circuit had jurisdiction pursuant to 28 U.S.C. §1291 and consolidated the appeals. Bowen and Ballas subsequently settled with Prach and Tsiribko.

The court of appeals reversed the judgment of the district court and remanded with instructions to

enter judgment in favor of Bowen and Ballas. The court also vacated the award of attorney's fees as a result of the reversal.

ARGUMENT

> When the full weight of a city, by way of its police department, is brought to bear on a person and where criminal and other types of investigations are threatened in order to a discourage third party from helping minorities find suitable housing, there is "interference, coercion or intimidation" of the type contemplated by Fair Housing Act. *People Helpers, Inc. v. City of Richmond*, E.D.Va.1992, 789 F.Supp. 725.

Certiorari should be granted because the court of appeals has entered a decision regarding an important federal question that is in conflict with decisions of both this Court and other United States courts of appeals. Sup.Ct.R. 10(c).

In its unpublished decision, the Court of Appeals for the Ninth Circuit held that in order for a plaintiff to meet the causation standard under the

Fair Housing Act (42 U.S.C. §3601 et Seq.: "FHA"), the plaintiff must show that the corporation exercised "control or power" over the police and prosecutor, or directed their activities. Providing no explanation as to why such a harsh causation standard applied that was applied in a §1983 civil rights case applies to the Fair Housing Act, the court of appeals deviated from well established precedent.

First, the court of appeals' decision incorrectly applied the causation standard to the employer, thereby rendering the principle of vicarious liability inapplicable to FHA claims. This decision fails to address, and directly conflicts with well established authority from this Court and from other circuits that hold that the FHA provides for vicarious liability. *See Meyer v. Holley*, 537 U.S. 280, 285 (2003) ("An employer may be liable for both negligent

and intentional torts committed by an employee within the scope of his or her employment." *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 756 (1998)). In the present case, the court of appeals ignored the jury finding that Bowen's agent, Ms. Lemons was at all times acting within the scope of her employment when the violation of the FHA occurred.

Second, even if this Court were to require a claimant to show how each defendant caused his injury, the causation standard that the court of appeals has applied is a heightened and narrow standard that conflicts with authority from this Court and other courts of appeals. This Court has noted that an action brought for compensation by a victim under the FHA is, in effect, a tort action. *See Curtis v. Loether*, 415 U.S. 189, 195-196 (1974). The

Court has assumed that, when Congress creates a tort action, it legislates against a legal background of ordinary tort-related liability and intends its legislation to incorporate those rules. *Meyer*, 537 U.S. at 285.

Third, review of the court of appeals' decision is necessary and appropriate due to the exceptional impact of this case. By holding that a corporation will not be liable for the conduct of the corporation's agent in trying to cover up discrimination unless the corporation controlled or directed the investigation and prosecution, the court of appeals' decision has, without exaggeration, eviscerated the FHA while simultaneously providing a means for making discrimination complaints virtually unenforceable. Such a holding warrants scrutiny.

I. THE COURT OF APPEALS IMPROPERLY APPLIED THE CAUSATION STANDARD TO THE EMPLOYER THEREBY RENDERING THE PRINCIPLE OF RESPONDEAT SUPERIOR INAPPLICABLE TO FHA CLAIMS.

In reaching its conclusion that the criteria for liability under the FHA are different than under general principles of tort law, the court of appeals abrogated vicarious liability. The court provided no explanation for the abrogation but rather relied on a Ninth Circuit case as a basis for definition and application of the causation standard.

An action brought under the Fair Housing Act is essentially a tort action. *See Curtis v. Loether*, 415 U.S. 189, 195-96; *see also Meyer*, 537 U.S. 280, 285. The Court has assumed that, when Congress creates a tort action, it legislates against a legal background of ordinary tort-related vicarious liability rules and consequently intends its legislation to incorporate

those rules. *Meyer*, 537 U.S. at 285 (citing *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999); *United States v. Texas*, 507 U.S. 529, 534 (1993) ("In order to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law"). While Congress was silent concerning the incorporation of ordinary principles, "this silence cannot show that it intended to apply an unusual modification of those rules." *Id.* at 286. The Court will only apply stricter rules where Congress has to specify that it intends such. *Id.* at 297 (citing *United States v. Dotterweich*, 320 U.S. 277, 280-81 (1943)). While this Court agreed with the characterization of the objective of the Act as an "overriding societal priority," it nonetheless held that liability should be determined according to traditional principles of vicarious liability. This

Court reasoned that the question "of which 'of two innocent people must suffer,' and when, is a complex matter" and should be determined in accordance with tradition principles of vicarious liability. *Meyer*, 537 U.S. at 290 (striking down liability for a corporate supervisor, under a theory of vicarious liability, as inconsistent with traditional agency principles).

It is a well established agency principle that a principal is legally responsible for the acts, conduct, and statements of its agents done within the scope of the agent's apparent authority. *Meyer*, 537 U.S. at 285 (citing *Ellerth*, 524 U.S. 742. "An employer may be liable for both negligent and intentional torts committed by an employee within the scope of his or her employment; *New Orleans, M., & C. R. Co. v. Hanning*, 82 U.S. 649 (1873) ("The principal is liable

for the acts and negligence of the agent in the course of his employment, although he did not authorize or did not know of the acts complained of"); *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1095, n. 12 (7th Cir. 1992), cert. denied. 508 U.S. 972 (1993) (noting that even an act that the employer forbids can still be within the scope of employment). "The rule is [also] well settled that the liability of a principal for the act of his agent in instituting a malicious prosecution or causing a false arrest or imprisonment is dependent on whether the principal previously authorized the act or subsequently ratified it, or whether the act was within the scope of the agent's employment." *Maryland Casualty Co. v. Woolley*, 36 F.2d 460 (9th Cir. 1929) (finding no liability where the actions were outside the scope of employment); *see also Corpus*

Juris Secundum §58; *see also Osborne v. Payne*, 31 S.W.3d 911, 915 (Ky. 2000) (A principal is not liable under the doctrine of *respondeat superior* unless the intentional wrongs of the agent were calculated to advance the cause of the principal or were appropriate to the normal scope of the operator's employment); *see also Dickinson v. Edwards*, 105 Wash.2d 457 (1986). Since it can often be difficult to determine whether an employee's actions fill within the apparent scope of his employment, courts generally hold that the issue of scope of employment is a question of fact to be decided by a jury. *Willis v. Maysville & B.S.R. Co.*, 122 Ky. 658 (Ky. 1906).

The court of appeals' decision not only overlooked, but completely ignored precedent from this Court. While fixated on the issue of proximate cause, the court of appeals disregarded vicarious

liability when it applied a heightened standard from one of its own §1983 cases. 42 U.S.C. §§1983; *Arnold v. International Business Machines*, 637 F.2d 1350 (9th Cir. 1981). The court of appeals has defined the law in such a way that it ignores this fundamental principal of the FHA thereby requiring correction by this court.

The court of appeals relied exclusively on *Arnold v. International Business Machines*. 637 F.2d 1350. *Arnold* was a case under 42 U.S.C. §§1983 and 1985, not the FHA, and was based on a company's investigation into stolen trade secrets. 637 F.2d at 1351-52. The Ninth Circuit held that since the company had no control over the Task Force nor directed it to take action against Arnold that he could not show that the company proximately

caused his injury when they resulted from the actions of the Task Force. *Id.* at 1356.

The situation in Arnold is clearly inapposite. In the *Arnold* case, IBM, without knowing who the potential culprit was, asked the police start an independent investigation in an effort to find out who was stealing their trade secrets. *Arnold*, 637 F.2d 1350. Here, the company's lack of control, or rather laissez-faire managerial style, allowed the property manager the opportunity to collect "additional fees" from Russian tenants. When her discriminatory acts were threatened with exposure, Ms. Lemons retaliated against Kriger, Prach, Tsiribko, and Samolovov by calling the police and falsely accusing them of extortion.

It is important to note that while the court of appeals' decision abrogates vicarious liability, the

court did not specifically hold that there was no vicarious liability under the FHA. The problem of abrogation lies in the application of §1983 claims as compared to FHA claims. This Court has said that the FHA generally "imposes personal liability without fault upon a corporation" for the acts of an employee or agent where as §1983 claims generally do not. *See Meyer*, 537 U.S. at 283; *see also Pearson v. Miller*, 988 F. Supp. 848 (M.D. Pa. 1997). Principles of vicarious liability and respondeat superior generally do not apply in civil rights claims. *See Id; see also Polk County v. Dodson*, 454 U.S. 312 (1981). The causation standard set forth for §1983 is incompatible with principals of vicarious liability. *See Id; see also Tharling v. City of Part Lavaca*, 329 F.3d 422 (5th Cir. 2003).

Thus, while a claimant under the FHA must show that their injury was proximately caused by discriminatory or retaliatory conduct, the claimant does not have to show that the employer/principal specifically caused the injury when he is relying on vicarious liability. In distinct contrast to FHA claims, the *Arnold* court correctly held that §1983 claims require a claimant to show that each defendant proximately caused his injuries.

While an FHA claimant must show a causal link between the injury and action complained of, the court of appeals has defined and applied causation in a way that it abrogates vicarious liability.

II. THE COURT OF APPEALS APPLIED A CAUSATION STANDARD SO NARROW IT BECOMES A HEIGHTENED STANDARD THAT IS NOT CONSISTEN WITH TRADITIONAL TORT PRINCIPLES.

In reaching its conclusion regarding causation under the FHA, the court of appeals ignored well set principles regarding the application of ordinary tort rules to the FHA. Instead, the court applied a narrow and thus heightened standard of causation.

Relying on *Arnold*, the panel, without explanation, applied a standard of causation where the plaintiff must show that the employer exercised "control or power" over the police and prosecutor, or directed their activities. 637 F.2d 1350. *Arnold*, however, did not involve a §3617 claim or even another claim under the Fair Housing Act. It involved §§1983 and 1985 claims, where there is a

requirement that the private actor walk in the shoes of the state actor in order to be liable.

"In order for a private individual to be liable for a §1983 violation when a state actor commits the challenged conduct, the plaintiff must establish that the private individual was the proximate cause of the violations." *Franklin v. Fox*, 312 F.3d 423, 445-46 (9th Cir. 2002) (citing *King v. Massarweh*, 782 F.2d 829 (9th Cir. 1986)). "Absent some showing that a private party had some control over state officials' decision [to commit the challenged act], the private party did not proximately cause the injuries stemming from [the act]." *Id.* As such, the Seventh Circuit has held, that a person who supplies inaccurate information that leads to an arrest is not involved in a joint activity with the state and, thus,

is not liable under section 1983. *Butler v. Goldblatt Bros., Inc.*, 589 F.2d 323, 327 (7th Cir. 1978).

The court of appeals in *Arnold* discussed proximate cause at length and set out the rule for proximate cause: "the requisite causal connection can be established not only by some kind of direct personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor know or reasonably should know would cause other to inflict the constitutional injury." *Arnold*, 637 F.2d 1355. Here, the court of appeal's decision completely ignores the rest of the standard and opts for the narrow and heightened portion that requires direct control. This is not consistent with precedent from this Court, which adopted the standard application of tradition tort principles. Meyer, 537 U.S. 280.

Further, the heightened causation standard is contrary to tradition tort applications under the FHA. Clearly the heightened causation stand would lead to a different result in a traditional tort claim alleging malicious prosecution. Under a tort claim for malicious prosecution, a defendant can be found guilty where the information furnished by the defendant and upon which the official acted, was known to be false. *White v. Chicago, Burlington and Quincy Railroad*, 417 F.2d 941 (1969) (allowing a malicious prosecution action to proceed where the company's investigator lied to the police); *Wilstein v. San Tropai Condominium Master Association*, No. 98 C 6211, 1999 WL 262145 (N.D. Ill. April 22, 1999). Section 653 of the Restatement 2nd of Torts explains that "where the information is known by the giver to be false, an intelligent exercise of the officer's

discretion becomes impossible, and a prosecution based upon it is procured by the person giving the false information."

The appellate court's definition and application of the causation standard is so narrow that it becomes unworkable for full and consistent application of the FHA. Specifically, the decision abolishes the FHA remedies for all third parties who are retaliated against through false accusations of criminal conduct.

III. PUBLIC POLICY DEMANDS THAT THE COURT REVERSE THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS.

Section 3601 declares the policy of the FHA: "to provide within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. §3601. The Fourth Circuit elaborated on the policy behind the imposition of vicarious liability when it

stated: "The central question to be decided in a case such as this . . . is which innocent party, the owner whose agent acted contrary to instruction, or the potential renter who felt the direct harm of the agent's discriminatory failure to offer the residence for rent, will ultimately bear the burden of the harm caused. It is clear that the overriding societal priority of the provision 'fair housing throughout the United States' clearly set out in the Fair Housing Act, indicates that the one innocent party with the power to control the acts of the agent, the owner of the property or other responsible superior, must act to compensate the injured party for the harm, and to ensure that similar harm will not occur in the future." *Walker v. Crigler*, supra, 976 F.2d 900, 904-05 (4th Cir. 1992).

The court of appeals for the Ninth Circuit seized on this language and extended liability under the FHA to corporate officers. *Meyer*, 537 U.S. 280. This Court granted certiorari and reversed the Ninth Circuit. *Id.* While this Court agreed that the question of liability is enshrouded in the suffering of one of two innocent parties, the court held that the question was best answered using tradition principles of vicarious liability. *Id.* at 831 (refusing to find an expansion of vicarious liability or a shifting of liability).

The Ninth Circuit's decision leaves the plaintiffs without recourse. The injuries that the plaintiffs have suffered are real and severe, but without the ability to hold the employer liable, the plaintiffs will not be compensated. Further, there is no assurance that similar harm will not occur in the

future. No legitimate policy is furthered by diminishing liability under the FHA.

IV. THE ISSUE PRESENTED BY THIS CASE IS OF NATIONAL IMPORANCE.

Review by this Court of the decision of the court of appeals is necessary and appropriate due to the exceptional importance of this case. Discrimination still festers in the United States over 40 years after the passage of the Fair Housing Act. Not only does the decision of the court of appeals essentially eviscerate the rights of private individuals to sue under the FHA, but it also provides protection to those that discriminate. By retaliating in the form of false criminal accusations, a person that discriminates not only has the opportunity to silence her accusers while protecting her job and employer, but is also ensured that no one

else will speak up, thus allowing her to be free to continue to discriminate.

While this case involves a small number of plaintiffs, the impact on potential future plaintiff is enormous. By providing a shield for employees to deflect accountability for discriminatory acts while protecting employers from liability, the court of appeals has closed the door to the court house while providing protection to a gross form of retaliation. It will be much more difficult for claimants to seek adequate relief from discrimination and retaliation while at the same time it will be easier for those that discriminate to get away with the discrimination and retaliation.

Not only will those that are discriminated against face increased hardship, but this decision will have a chilling effect on the willingness of third

parties to help others assert their rights under the FHA. This decision will cause a third party think twice about whether potential criminal charges are worth the reward of stamping out discrimination.

Housing discrimination undermines a fundamental premise on which our free society rests: that every person, regardless of class or group background, should have the same right to the rewards of his or her work and enterprise. Housing discrimination eliminates that possibility for untold numbers of Americans, denying them a chance at their American dream. Without strict enforcement of fair housing laws, those who suffer discrimination cannot be empowered to share fully in the opportunities that should be open to them as a matter of right. Surely, such a holding warrants

further scrutiny by this Court before becoming the law of the nation.

CONCLUSION

For the foregoing reasons, Petitioner prays for a writ of certiorari to issue to the Court of Appeals for the Ninth Circuit.

Dated this 30th day of March, 2009.

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